

**U.S. Rep. Nick J. Rahall**  
**Ranking Democrat - House Resources Committee**  
**“Native American Sacred Lands Act”**  
**June 11, 2003**

**The Problem**

Across the country, sites of religious importance to Native Americans are in danger of becoming casualties of the current Administration's push to open federal lands to development. Despite several laws in place aiming to protect the religious freedom of Native Americans and the historic and cultural value of their lands, there is no comprehensive approach or enforceable law to protect sacred lands from energy development and other potentially harmful activities.

**Background**

Over the past 30 years, Congress has worked to protect the religious rights of Native Americans. Laws such as the American Indian Religious Freedom Act and American Indian Free Exercise of Religion Act support the right to religious practice for all Native Americans. Furthermore, through both the National Historic Preservation Act and the Native American Graves and Repatriation Act, Congress has worked to protect cultural and historic sites from negative land management decisions. However, none of these statutes specifically address the protection of sacred lands.

In 1996, President Clinton issued Executive Order 13007 to protect Native American sacred lands. While this action has helped promote coordination and consultation with Indian Tribes, it does not provide the same enforceable protection as enacted legislation.

There are dozens of endangered Indian sacred lands in the United States. The proposed site for a 1,600-acre, open-pit gold mine in Indian Pass, Calif., is a place where "dream trails" were woven. The Bush Administration revoked a Clinton-era ruling that said mining operations would cause irreparable harm to these ancestral lands, an extremely sacred place to the Quechan Indian tribe. Now the tribe is left fighting for its religious and cultural history. Although recently the state of California has taken action to help protect this site, the Federal government continues to permit the mining activity.

In New Mexico, 60 miles south of the Zuni Pueblo, lies the Salt Lake. When water evaporates in the summer, layers of salt are exposed on the lake bottom. Zuni and other tribal medicine men harvest the salts for use in sacred ceremonies. A public utility wants to build a massive coal strip mine just 11 miles north of the lake. To operate such a mine the company will have to pump water from the same aquifer that feeds the Zuni Salt Lake, increasing potential harm to the lake and the salt reserves. Protecting Salt Lake from Federal action is an on-going battle for Zuni.

The Lummi Nation faces a different sort of problem. There is not a question of damage to

their sacred lands, theirs is an issue of access to their sacred sites. Their sacred lands are within the ancient forest located around Mt. Baker in the Snoqualmie National Forest. The Snoqualmie National Forest is located in Washington State and extends more than 140 miles along the western slopes of the Cascade Mountains from the Canadian border to the northern boundary of Mt. Rainier National Park. The Lummi Nation sacred sites are scattered throughout this forest and access to these sites has become difficult.

Until recently, the Valley of Chiefs in Montana was also a threatened place. After almost a year of negotiations, the oil company, which intended to drill in this valley of peace, agreed to transfer its oil leases to the National Trust for Historic Preservation. Prior to this settlement, U.S. Rep. Nick J. Rahall, the Ranking Democrat on the House Resources Committee, introduced H.R. 2085, the Valley of Chiefs Native American Sacred Site Preservation Act, which would prohibit the Secretary of Interior from issuing oil and gas leases and drilling permits in this very sacred area. This legislation, along with media attention, served as a catalyst for reaching the agreement to protect the Valley of Chiefs.

### **Proposed Solution**

The Native American Sacred Lands Act (NASLA), introduced by Rep. Nick J. Rahall (D-WV), would enact into law the intentions of EO 13007. NASLA largely adopts with some fine-tuning the definition of sacred lands contained in EO 13007 while specifically ensuring the accommodation of access to and ceremonial use of sacred lands and mandate all federal land management agencies take the necessary steps to prevent significant damage to sacred lands. In June 2002 the National Congress of American Indians adopted a resolution stating its support for legislation following the EO 13007 language and promoting a “positive” change in federal law. This bill largely resembles that of H.R. 5155, which Rep. Rahall introduced during the 107<sup>th</sup> Congress. Unfortunately, this bill was not passed.

In addition to the protections offered under EO 13007, NASLA gives Indian Tribes the ability to petition the government when proposed federal or federally assisted actions would cause significant damage to their sacred lands. The petition would contain evidence, including oral histories, supporting the Tribe’s allegations. Within 90 days of the receipt of the petition, the appropriate federal Department would be required to hold a public hearing and allow all interested parties to provide information. The Department Secretary would then issue a written decision on the petition outlining the reasons for the decision within 60 days of the hearing.

Should the Secretary find, through the presentation of evidence, that an action would cause significant damage to Indian sacred lands, those lands would be designated as unsuitable for development. Pursuant to the Federal Land Policy and Management Act (FLPMA), the Secretary of the Interior, in conjunction with the appropriate federal agency, would then withdraw the “unsuitable” land and incorporate it into an appropriate land-use plan, preventing the land from being open for energy leasing or other incompatible developments.

NASLA contains a confidentiality clause stating no information obtained as a result of a

petition containing a reference to a specific detail of a Native American religious practice, or the specific location of that sacred land may be released unless all parties agree to release. Initial violation of the confidentiality provision would be punishable by not more than \$10,000, imprisonment for one year, or both. Subsequent violators would face up to a \$100,000 violation, five years in prison, or both.

In addition, this legislation includes a provision to permit the transfer of sacred land from the federal government to the affected Indian tribe, as well as a provision permitting for the co-management of sacred sites by the Federal agency and Indian tribes.